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Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

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Chapter I
Introduction

1. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization was convened in accordance with General Assembly resolution 57/24 of 19 November 2002 and met at United Nations Headquarters from 7 to 16 April 2003.

2. In accordance with paragraph 5 of General Assembly resolution 50/52 of 11 December 1995, the Special Committee was open to all States Members of the United Nations.

3. The Special Committee held two meetings, the 243rd meeting, on 7 April, and the 244th meeting, on 16 April. The Working Group of the Whole held nine meetings, the 1st and 2nd meetings on 7 April; the 3rd and 4th meetings on 8 April; the 5th meeting on 9 April; the 6th meeting on 10 April; the 7th meeting on 11 April; the 8th meeting on 14 April; and the 9th meeting on 15 April. Informal consultations were also held on 9 and 10 April 2003.

4. On behalf of the Secretary-General, the session was opened by the Under-Secretary-General for Legal Affairs, the Legal Counsel, Hans Corell.

5. At its 243rd meeting, on 7 April 2003, the Special Committee, bearing in mind the terms of the agreement regarding the election of the officers reached at its session in 1981[1] and taking into account the results of the pre-session consultations among its Member States, elected its Bureau, as follows:

Chairman:
Jagdish Dharamchand Koonjul (Mauritius)

Vice-Chairpersons:
Angela Cavaliere de Nava (Venezuela)
Giuseppe Nesi (Italy)
Ivica Dronjić (Bosnia and Herzegovina)

Rapporteur:
Mohammed Haj Ibrahim (Syrian Arab Republic)

6. The Bureau of the Special Committee also served as the Bureau of the Working Group.

7. The Director of the Codification Division of the Office of Legal Affairs, Václav Mikulka, acted as Secretary of the Special Committee. The Principal Legal Officer of the Division, Anne Fosty, acted as Deputy Secretary of the Special Committee and Secretary to its Working Group. The Codification Division provided the substantive services for the Special Committee and its Working Group.

8. Also at its 243rd meeting, the Special Committee adopted the following agenda (A/AC.182/L.113):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.

5. Consideration of the questions referred to in General Assembly resolution 57/24 of 19 November 2002, in accordance with the mandate of the Special Committee as set out in that resolution.

6. Adoption of the report.

9. At the same meeting, the Special Committee established a Working Group of the Whole and agreed on the following organization of work: proposals relating to the maintenance of international peace and security (eight meetings); proposals regarding the peaceful settlement of disputes between States (one meeting); proposals concerning the Trusteeship Council (one meeting); proposals on the ways and means of improving the working methods of the Committee (two meetings); *Repertory/Repertoire* (one meeting); question of the identification of new subjects (one meeting); and consideration and adoption of the report (two meetings). The distribution of meetings would be applied with the necessary degree of flexibility, taking into account the progress achieved in the consideration of the items.

10. General statements touching upon all items or upon several of them were made at the 243rd meeting as well as, in some instances, prior to the consideration of each of the specific items in the Working Group. The substance of those general statements is reflected in the relevant sections of the present report.

11. With regard to the question of the maintenance of international peace and security, the Special Committee had before it all the related reports of the Secretary General,[2] in particular the most recent report, entitled "Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions" (A/57/165 and Add.1), and the 1998 report on the matter containing a summary of the deliberations and main findings of the ad hoc expert group meeting convened pursuant to paragraph 4 of General Assembly resolution 52/162 of 15 December 1997 (A/53/312); a proposal submitted by the Russian Federation at the current session entitled "Declaration on the basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation" (A/AC.182/L.114) (see para. 39 below); a working paper submitted by the Russian Federation at the 2002 session entitled "List of proposals and amendments to the Russian working paper entitled 'Basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation' introduced during the first reading of the paper" (A/AC.182/L.100/Rev.1/Add.1);[3] a working paper submitted by the Russian Federation at the 2000 session of the Committee entitled "Basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation" (A/AC.182/L.100/Rev.1);[4] a working paper submitted by the Russian Federation at the 1998 session of the Committee, entitled "Basic conditions and criteria for the introduction of sanctions and other coercive measures and their implementation" (A/AC.182/L.100);[5] a revised working paper submitted by the Libyan Arab Jamahiriya at the 2002 session of the Special Committee on the strengthening of certain principles concerning the impact and application of sanctions (A/AC.182/L.110/Rev.1);[6] a working paper submitted by the Libyan Arab Jamahiriya at the 2001 session of the Committee on the strengthening of certain principles concerning the impact and application of sanctions (A/AC.182/L.110 and Corr.1);[7] an informal working paper submitted by the Russian Federation at the 1997 session of the Committee, entitled "Some views on the importance of and urgent need for the elaboration of a draft declaration on the basic principles and criteria for

the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts" (A/AC.182/L.89/Add.1);[8] a working paper also submitted by the Russian Federation at the 1998 session of the Special Committee, entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations" (A/AC.182/L.89/Add.2 and Corr.1);[9] a working paper submitted by the delegation of Cuba at the 1998 session of the Special Committee, entitled "Strengthening of the role of the Organization and enhancing its effectiveness" (A/AC.182/L.93/Add.1);[10] a revised proposal also submitted at the 1998 session by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security (A/AC.182/L.99);[11] a working paper submitted at the 1999 session of the Special Committee by Belarus and the Russian Federation containing a draft resolution of the General Assembly and a revision thereof (A/AC.182/L.104/Rev.1);[12] and a revised working paper submitted by Belarus and the Russian Federation at the 2001 session of the Committee containing a revised version of a draft resolution of the General Assembly (A/AC.182/L.104/Rev.2).[13]

12. With regard to the topic "Working methods of the Special Committee", the Special Committee had before it a further revised working paper submitted by Japan and the Republic of Korea containing a draft paragraph to be inserted in the report of the Special Committee (A/AC.182/L.108/Rev.2) (see para. 187 below); a proposal submitted by Japan at the 2002 session on further revisions to the draft paragraph to be inserted in the report of the Special Committee (A/AC.182/L.108/Rev.1);[14] a working paper submitted by the delegation of Japan at the 2000 session entitled "Ways and means of improving the working methods and enhancing the efficiency of the Special Committee" (A/AC.182/L.107);[15] and a proposal by the delegation of Japan submitted also at the 2000 session, on ways and means of improving the working methods and enhancing the efficiency of the Special Committee (A/AC.182/L.108).[16]

13. At its 244th meeting, on 16 April 2003, the Special Committee adopted the report of its 2003 session.

Chapter II
Recommendations of the Special Committee

14. The Special Committee submits to the General Assembly:

(a) As regards the question of the maintenance of international peace and security, in particular, the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions, the recommendation in paragraph 36 below;

(b) As regards the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, the recommendation in paragraph 183 below.

Chapter III
Maintenance of international peace and security

A. Implementation of the Charter provisions related to assistance to third States affected by sanctions

15. The Special Committee considered the question of the implementation of the provisions of the Charter related to assistance to third States affected by sanctions during the general exchange of views held at its 243rd meeting, on 7 April, as well as during the 1st and 2nd meetings of the Working Group of the Whole, also on 7 April.

16. Delegations affirmed the importance and the priority that they attached to the consideration of the topic, with some delegations expressing regret that there was lack of progress, despite the fact that the Committee had been seized of the matter for several years. While recognizing the competence of the Security Council in matters concerning the imposition of sanctions, the view was expressed that the General Assembly had a role to play in assisting in the formulation of relevant criteria for the establishment of appropriate sanctions regimes. Several delegations expressed their support for the establishment of a working group of the Sixth Committee, which, in contrast to the general manner in which the topic was being treated, could usefully provide a framework for focused discussion as well as assist in the achievement of significant progress on the question. In that connection, the suggestion was made that the Special Committee should make a recommendation for the establishment of such a working group.

17. The view was expressed that the question of the implementation of the Charter provisions related to assistance to third States affected by sanctions was one of the areas in which the United Nations, generally, and the Special Committee, in particular, had made visible progress. The recent practice in the work of the Security Council and its sanctions committees was attributed to the impact of discussions within the Special Committee and the General Assembly. On that account it was essential, first, to take stock of the progress achieved before the Committee prematurely decided to recommend the establishment of a working group of the Sixth Committee. It was further averred that it would be necessary to focus on issues that could yield practical positive results, such as setting up of common procedures or devising ways and means of ensuring that financial institutions paid more attention to the situation of those States adversely impacted by sanctions.

18. The point was also made that the urgency of discussing the matter should not be overstated, particularly in the light of the attention given by the international community to the question as well as developments in recent years. It was noted in particular that in establishing sanctions regimes, in its current practice, the Security Council had been taking into account the various concerns aimed at alleviating the impact of sanctions on local populations and on third States. Consequently, the focus of the Council was to impose armed embargoes, target State officials and freeze their assets and to earmark instruments that fuelled conflict such as "conflict diamonds".

19. The view was expressed that the concern relating to the provisions of Article 50 was a legal one, which was contemplated as such even by the framers of the Charter, as well as a practical one with adverse repercussions for Member States,

especially for vulnerable groups. Concern was expressed in particular over the adverse effects of sanctions on civilian populations and on third States. Support was therefore voiced for the various efforts and initiatives aimed at minimizing the unintended negative effects of sanctions on such populations and third States while at the same time preserving their effectiveness.

20. Several delegations stressed that sanctions were an extreme measure of last resort, which should be imposed after all peaceful means for the settlement of a dispute, under Chapter VI of the Charter, had been exhausted. It was also noted that sanctions were not and should not be contrived as a punitive measure. Some delegations noted that mandatory sanctions were a necessary, important and effective policy tool employed by the Security Council to modify the policy or behaviour of a State, entity or group of individuals that posed a threat to international peace and security or committed an act of aggression. Furthermore, it was remarked that the imposition of sanctions under Chapter VII of the Charter of the United Nations was necessary in situations where the Security Council had determined the existence of a threat to or a breach of international peace or an act of aggression.

21. The view was expressed that the frequency with which sanctions had been resorted to in recent years had given rise to concerns about their credibility, noting further that the imposition and application of sanctions, by force, without the imprimatur of the Security Council, created a dangerous precedent in the conduct of international relations. Several delegations also expressed concern over what was characterized as the application of double standards in the imposition of sanctions, pointing out that weak States were often the object of sanctions regimes. On this view, if failure to implement resolutions of the Security Council was the logical and legitimate basis for the imposition of sanctions, a fortiori the same standard should be applied to all those that failed to implement Security Council resolutions.

22. Several delegations called upon the Security Council to be fair and equitable in its application of sanctions. It was pointed out that it should make an objective evaluation and assessment, without overestimation, of the short-, medium- and long-term impact of sanctions on third States as well as the target States, giving special consideration to their humanitarian impact. It was observed that such assessment should be made prior to the imposition of sanctions. It was noted further that sanctions should be clearly defined, targeted, imposed for a specific time frame, subject to periodic review and lifted as soon as the reason for their imposition has ceased to exist or the situation giving rise to their imposition had returned to normalcy. In that connection, some delegations made reference to the Final Document of the Twelfth Summit of Heads of State or Government of the Non-Aligned Countries, held in Durban, South Africa, on 2 and 3 September 1998.

23. The point was made that the whole question of sanctions should be addressed in a holistic manner, to include the impact of sanctions on target States as well. In that connection, support was expressed by some delegations for the proposals submitted by the Russian Federation on the basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation (see sect. III.B below) and the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the application of sanctions (see sect. III.C below).

24. Delegations welcomed the recommendations and main findings of the ad hoc expert group meeting on developing a methodology for assessing the consequences

incurred by third States as a result of preventive or enforcement measures and on exploring innovative and practical measures of international assistance to affected third States,[17] with some delegations noting that the in-depth review undertaken by the group was a significant step towards the practical implementation of Articles 49 and 50 of the Charter of the United Nations. Moreover, other delegations characterized the report of the ad hoc expert group as an important document, which constituted a solid basis for attaining concrete results.

25. In addition, some delegations expressed the wish for a detailed and in-depth discussion on the report of the ad hoc expert group meeting in the context of the work of the Special Committee or of the Sixth Committee of the General Assembly. Other delegations noted that any discussion on the matter should take into account recent developments concerning the improvement of the effectiveness of sanctions within and outside the United Nations system. In that regard, reference was made to the examples contained in the reports of the Secretary-General on the implementation of the provisions of the Charter related to assistance to third States affected by sanctions (A/56/303), and on the capacity and modalities within the Secretariat for implementing the recommendations of the ad hoc expert group (A/57/165), noting that the recommendations in General Assembly resolution 56/57 of 12 December 2001 were similar to the recommendations of the expert group. It was also noted that the Security Council and its sanctions committees had, in their practice, increasingly been applying the recommendations contained in resolutions of the General Assembly and the recommendations of the ad hoc expert group meeting.

26. Moreover, States and relevant international organizations were urged to continue to make their input on the report of the ad hoc expert group meeting and the point was made that other bodies within the United Nations system such as the Economic and Social Council should also have an in-depth discussion on the recommendations and main findings of the meeting.

27. Several delegations made specific comments on the recommendations and main findings of the ad hoc expert group meeting. It was noted that since the Security Council had the primary responsibility in the imposition of sanctions, the United Nations should consequently work towards the establishment of mechanisms for the provision of relief to countries affected by sanctions. The view was expressed that the Council should apply a clear and coherent methodology for the imposition, application and lifting of sanctions. Some delegations acknowledged that in dealing with the effects of sanctions on third States, the choice of the applicable methodology depended on the particular circumstances of the affected States and the specific features of the sanctions regimes, noting further that the five methods reviewed by the ad hoc expert group meeting provided flexibility and a good basis for future work.

28. Several delegations reiterated some of the innovative practical measures that needed to be considered in order to take into account the hardships encountered by third States, such as granting commercial exemptions or concessions or special or preferential treatment to affected third States or their suppliers, according priority for investment in the target State to contractors of affected third States, participation in the provision of supplies for peacekeeping operations or in the post-conflict rehabilitation, reconstruction and development, as well as direct consultations by the Security Council with such affected States.

29. In addition, some delegations noted that the Security Council had a responsibility to respond, without delay, to applications made pursuant to Article 50 of the Charter. The view was also expressed that there was a close link between the effectiveness of sanctions and efforts aimed at mitigating their unintended effects, noting that even in situations where targeted sanctions were applied there was a need to monitor their unintended effects, through the improvement of mechanisms for communication. It was furthermore asserted that the interests of the international community in this question could best be served by the creation of a permanent and reliable legal mechanism for addressing concerns of affected States with automaticity and without delay. It was emphasized that Article 50 should not be perceived entirely as a procedural Article. Other delegations underscored the need to operationalize the provisions of Article 50 through the establishment of mechanisms, such as a fund to provide relief to third States affected by sanctions, a trust fund or a standing Security Council committee, with an appropriate degree of transparency, to coordinate the activities of the Council in matters concerning sanctions.

30. Some delegations stressed the importance of the principle of burden-sharing, observing that all States Members of the United Nations should bear equitable and shared responsibility for meeting the consequences of the implementation of sanctions on behalf of the Organization as a whole. Concurring in the view of the ad hoc expert group meeting that the cost of implementing sanctions should be viewed as the opportunity cost of a possible alternative to an international military action or peacekeeping operation, it was observed that suggestions for funding procedures similar to those adopted for peacekeeping operations should be supported.

31. The current procedure and practice of the Security Council with regard to sanctions were also the subject of comment by delegations. Some delegations noted with satisfaction the attention given by the Council to the question of sanctions, as exemplified by its recent meeting on general issues relating to sanctions held on 25 February 2003.[18]

32. Delegations also characterized as positive the continuing efforts of the Security Council to improve and streamline the working procedures of its sanctions committees, including efforts to facilitate access of affected third States to such committees. Some delegations also underlined the important work of the Security Council Working Group on Sanctions established pursuant to the note of the President of the Security Council dated 17 April 2000[19] and looked forward to early agreement on its conclusions. A suggestion was made that the draft outcome document of the Chairman, without the paragraphs that remained in contention, should be published as a document of the Security Council. It was noted in that regard that such a publication would constitute a reference document of Council practice and would also facilitate the work of the Special Committee.

33. Some delegations welcomed the recent practice of the Security Council to impose targeted sanctions of a limited duration when designing sanctions regimes, as well as the adoption by the Council of the de-listing procedure and technical resolutions on humanitarian exemptions. In addition, targeted sanctions such as arms embargoes, travel restrictions, freezing of personal assets and exclusion from participation in international forums were viewed as appropriate interventions to address concerns regarding the humanitarian impact of sanctions.

34. Delegations also alluded to initiatives undertaken outside the framework of the United Nations which sought to establish targeted sanctions as a regular tool for application by the Security Council. The importance of the recommendations that had emerged from the pioneering seminar on smart sanctions, held in London, the Interlaken process on the effectiveness of sanctions, the Bonn-Berlin process on armed embargoes and travel sanctions, including flight bans was underlined and the recommendations thereof were commended for use by the Security Council and States Members of the United Nations.

35. It was noted that the results of the Stockholm process, focusing on individuals or entities responsible for threats to and breaches of international peace and security as well as on strengthening the capacity to implement targeted sanctions, had been presented to the Security Council at its meeting on general issues relating to sanctions, held on 25 February 2003.[20] Accordingly, the hope was expressed that the results of the Stockholm process would be integrated into future sanctions regimes.

36. The Special Committee welcomed the report of the Secretary-General summarizing the deliberations and main findings of the ad hoc expert group convened pursuant to General Assembly resolution 52/162 (A/53/312) and recommended that at its fifty-eighth session the Assembly should continue to consider, in an appropriate substantive manner and framework, the results of the ad hoc expert group meeting, taking into account the relevant debate in the Special Committee at its 2003 session, the views of States, the organizations of the United Nations system, the international financial institutions and other relevant organizations, as contained in the reports of the Secretary-General (A/54/383 and Add.1 and A/55/295 and Add.1), as well as the views of the Secretary-General regarding the deliberations and the main findings of the ad hoc expert group, contained in his most recent report (A/57/165 and Add.1), and the relevant information to be submitted by the Secretary-General on the follow-up to the note by the President of the Security Council (S/1999/92), and to address further the question of the implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions under Chapter VII and the implementation of General Assembly resolutions 50/51 of 11 December 1995, 51/208 of 17 December 1996, 52/162 of 13 December 1997, 53/107 of 8 December 1998, 54/107 of 9 December 1999, 55/157 of 12 December 2000, 56/87 of 12 December 2001 and 57/25 of 19 November 2002, taking into account all reports of the Secretary-General on the subject, the text on the question of sanctions imposed by the United Nations contained in annex II to General Assembly resolution 51/242 of 15 September 1997, the forthcoming report of the informal working group of the Security Council on general issues related to sanctions, as well as the proposals presented and views expressed in the Special Committee.

B. Consideration of the revised working paper submitted by the Russian Federation entitled "Declaration on the basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation"

37. During the general exchange of views held at the 243rd meeting, the Russian Federation informed the Special Committee that it had submitted a revised working paper entitled "Declaration on the basic conditions and standard criteria for the

introduction of sanctions and other coercive measures and their implementation" (A/AC.182/L.114). The revised text reflected most of the comments and suggestions made by delegations during the readings of the proposal at the previous sessions of the Committee. The sponsor expressed confidence that the adoption of the proposed Declaration by the General Assembly would provide useful assistance to the Security Council in the discharge of its functions relating to the application of sanctions under the Charter of the United Nations.

38. Support was expressed for the revised working paper. Some delegations were of the view that it constituted a useful basis for the Special Committee's continued consideration of the topic. The point was made that, among other criteria, sanctions should be resorted to only after all peaceful means had been exhausted; they should be targeted and have a clear time frame; they should be periodically reviewed; and conditions for their lifting had to be specified. The view was expressed that the thrust of the proposal by the Russian Federation could be seen as complementing the gist of the proposal submitted by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions (A/AC.182/L.110/Rev.1). Particular mention was made of the proposed provision in the text concerning the non-permissibility of a situation in which the consequences of the introduction of sanctions would inflict considerable material and financial harm on third States. The hope was expressed that, with good will and a constructive approach, the work on the revised proposal of the Russian Federation could be completed at the current session of the Special Committee. Some delegations, while welcoming the progress made in the consideration of the proposal during the 2002 session of the Committee, reiterated their position that the Special Committee should avoid dealing with issues that had been assigned to and were examined in other bodies.

39. At the 2nd meeting of the Working Group, the Russian Federation introduced the revised working paper entitled "Declaration on the basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementations" (A/AC.182/L.114), which reads as follows:

> "*The General Assembly*,
>
> "*Recalling* its resolution 51/241 of 31 July 1997 on strengthening of the United Nations system and its resolution 51/242 of 15 September 1997 entitled 'Supplement to an Agenda for Peace' in which it adopted documents contained in the annexes to that resolution on coordination and on the question of sanctions imposed by the United Nations,
>
> "*Recalling also* the United Nations Millennium Declaration, of 8 September 2000, in which the resolve was expressed to minimize the adverse effects of United Nations economic sanctions on innocent populations, to subject such sanctions regimes to regular reviews and to eliminate the adverse effects of sanctions on third parties,
>
> "*Convinced* that the adoption of the Declaration on the basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation will contribute towards strengthening the role of the United Nations and enhancing its effectiveness in maintaining international peace and security,

"*Considering* the need to ensure a wide dissemination of the text of the Declaration,

"1. *Approves* the Declaration on the basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation, the text of which is annexed to the present resolution;

"2. *Expresses its appreciation* to the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization for its important contribution to the elaboration of the text of the Declaration;

"3. *Requests* the Secretary-General to inform the Governments of the States Members of the United Nations or members of specialized agencies, and the Security Council, of the adoption of the Declaration;

"4. *Urges* that every effort be made to ensure that the Declaration becomes generally known and is fully implemented.

"Annex

"Declaration on the basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation

"*The General Assembly*,

"*Recalling* that the peoples of the United Nations are determined to practice tolerance and live together in peace with one another as good neighbours,

"*Bearing in mind* the right of all States to use peaceful means of their own choice for the prevention and removal of disputes or situations,

"*Reaffirming* the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, the Manila Declaration on the Peaceful Settlement of International Disputes, the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field, the Declaration on Fact-Finding by the United Nations in the Field of the Maintenance of International Peace and Security and the Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security,

"*Recalling* the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State,

"*Calling upon* States to cooperate fully with the relevant organs of the United Nations and to support action undertaken by them in accordance with the Charter to maintain or restore international peace and security,

"*Bearing in mind* the obligation of States to conduct their relations with other States in accordance with the principles of international law, including the purposes and principles of the United Nations,

"*Noting* the growing demands of the international community to consider ways of reducing the adverse destructive effects of sanctions both for target States and for third States, while ensuring their effectiveness,

"*Convinced* that special attention should be paid to the 'humanitarian limits' of sanctions, so as to alleviate the sufferings of the most vulnerable groups of the civilian population, above all children, women and the elderly,

"*Considering* that sanctions should not lead to destabilization of the economy either in the target State or in third States,

"*Considering also* that the determination of the criteria and conditions for the introduction of sanctions in accordance with the Charter of the United Nations and the principles of international law and justice would help eliminate or minimize their negative effects,

"*Stressing* that sanctions are an extreme measure, which should be adopted only when other peaceful means have been exhausted and only when the Security Council determines the existence of a threat to the peace, breach of the peace or act of aggression,

"*Recalling* that the Charter confers on the Security Council primary responsibility for the maintenance of international peace and security and that States have agreed, in accordance with the Charter, to accept and carry out its decisions,

"*Also recalling* the important role of the General Assembly, the Economic and Social Council and the Secretary-General in the maintenance of international peace and security, conferred on them by the Charter,

"I. *Solemnly proclaims*:

"1. The application of sanctions is an extreme measure and is permitted only after all peaceful means of settling the dispute or conflict and of maintaining or restoring international peace and security, including the provisional measures provided for in Article 40 of the Charter of the United Nations, have been exhausted and only when the Security Council has determined the existence of a threat to peace, a breach of the peace or an act of aggression.

"2. Sanctions must be introduced in strict conformity with the provisions of the Charter of the United Nations and the rules of international law and justice, pursue clear and precise objectives, have a time frame, be subject to regular review, taking into account the views of the target State, where appropriate, and provide for clearly stipulated conditions for lifting them, and the lifting of them must not be linked to the situation in neighbouring and other third countries.

"3. Under the system of collective security established by the Charter of the United Nations, sanctions are an important instrument for the prevention of conflicts and the maintenance of international peace and security and must not be used by one or more States for the purpose of subjugating another State

in the exercise of its sovereign rights and obtaining from it any advantages of any kind, unless authorized by the Security Council.

"4. Before the introduction of sanctions, the target State or party must, as a rule, be given unambiguous notice.

"5. The use of sanctions for the purpose of overthrowing or changing the lawful regime or existing political order in the target country is not permissible.

"6. The purpose of sanctions is to modify the behaviour of the target party that is threatening international peace and security, not to punish or otherwise exact retribution. Sanctions regimes must be commensurate with these objectives.

"7. The creation of a situation in which the consequences of the introduction of sanctions would inflict considerable material and financial harm on third States is not permissible. The Secretariat must make an objective assessment of the consequences of sanctions for the target State and for third States prior to their introduction in respect of the target State.

"8. The imposition on a target State of additional conditions for cessation or suspension of sanctions is not permissible except as a result of newly discovered circumstances and except where explicitly provided for in Security Council decisions.

"9. Objective assessment of the short-term and long-term socio-economic and humanitarian consequences of sanctions is necessary both at the stage of their preparation and in the course of their implementation.

"10. The Secretariat must provide the Security Council and the sanctions committees, at their request, with an assessment of the humanitarian and economic impact of sanctions.

"11. Sanctions regimes must ensure that appropriate conditions are created for allowing an adequate supply of humanitarian goods to reach the civilian population. Foodstuffs, medicines and medical supplies should be exempted from United Nations sanctions regimes. Basic or standard medical and agricultural equipment and basic or standard educational items should also be exempted; a list should be drawn up for that purpose. Other essential humanitarian goods should be considered for exemption by the relevant United Nations bodies, including the sanctions committees. In this regard, efforts should be made to allow target countries to have access to appropriate resources and procedures for financing humanitarian imports.

"12. Following the introduction of sanctions, the Secretariat should be requested to provide assistance in monitoring their effects for third countries which have suffered or may suffer as a result of their implementation, so that the Security Council and its sanctions committees may receive timely information and early estimates in this respect and, while maintaining the effectiveness of the sanctions regime, may make the necessary corrections or partial changes to its implementation or to the regime itself in order to mitigate the negative impact of the sanctions on third countries.

"13. When the Security Council considers issues relating to sanctions, account must be taken of humanitarian considerations, which are equally pressing in time of peace and in time of armed conflict.

"14. Decisions on sanctions must not create situations in which fundamental human rights not subject to suspension even in an emergency situation would be violated, above all the right to life, the right to freedom from hunger, the right to prevent and cure epidemic and other diseases and combat them, and the right to create conditions which would ensure medical services for all and care in the event of illness.

"15. The adoption of decisions and the implementation of sanctions should not create situations which would cause unnecessary suffering to the civilian population, especially its most vulnerable sectors. Sanctions regimes must correspond to the provisions of international humanitarian law, including international human rights norms.

"16. Sanctions may not be open-ended and should be subject to periodic adjustment, taking into account the humanitarian situation and depending on the fulfilment by the target State of the requirements of the Security Council. Time limits must be established for sanctions regimes; such time limits may be extended only on the decision of the Security Council.

"17. The temporary suspension of sanctions is desirable in emergency situations and cases of force majeure (natural disasters, threat of famine, mass disturbances resulting in the disorganization of the country's Government) in order to prevent a humanitarian disaster.

"18. Impermissibility of additional measures likely to cause a serious deterioration in the situation of the civilian population and breakdown of the infrastructure of the target State.

"19. Ensuring unimpeded and non-discriminatory access of the population of target countries to humanitarian assistance.

"20. Consideration of the views of international humanitarian organizations whose mandates have been generally recognized in drawing up and implementing sanctions regimes. Exclusion of international humanitarian organizations from the effect of sanctions limitations with a view to facilitating their work in countries which are the object of sanctions.

"21. Utmost simplification of the regime established for delivery of humanitarian supplies required for the sustenance of the population, and exclusion of medical supplies and staple food items from the scope of the sanctions regime. Basic or standard medical and agricultural equipment, basic or standard educational items, and basic items for hygiene, sewage and sanitation equipment, emergency vehicles and other vehicles, along with fuel and lubricants, should also be exempted.

"22. Strict observance of the principles of neutrality, independence, transparency, impartiality and the impermissibility of any form of discrimination in the provision of humanitarian and medical assistance and other forms of humanitarian support for all sectors and groups of the population. A condition of providing such assistance should be the prior clearly expressed consent of the recipient State or a request on its part.

"23. All .information on the humanitarian consequences of the introduction and implementation of sanctions, including those which have a bearing on the basic living conditions of the civilian population of the target State and on its socio-economic development, must be objective and must be as transparent as possible, and must be considered by the Security Council and its sanctions committees, with a view to the modification of the sanctions regime and, ultimately, to the full or partial lifting of the sanctions.

"24. The target State should exert all possible efforts to facilitate the equitable and unimpeded distribution of humanitarian assistance. Armed convoys may not be used to distribute humanitarian assistance, unless there is a decision to that effect by the Security Council.

"25. It is of paramount importance, in introducing and implementing sanctions, to observe the humanitarian limits of sanctions to ensure that they will contribute to the maintenance of international peace and security and that they will be legitimate from the standpoint of the Charter of the United Nations and the rules of international law and justice.

"II. *Declares* that nothing in the present Declaration shall be construed as prejudicing in any manner the provisions of the Charter, including those contained in Article 2, paragraph 7 thereof, the rights and duties of States, or the scope of the functions and the powers of United Nations organs under the Charter, in particular those relating to the maintenance of international peace and security."

40. In its introductory remarks, the sponsor delegation reiterated that the proposed text of the Declaration reflected most of the amendments and editorial suggestions made by delegations during the discussion of the working paper at the previous sessions of the Special Committee, in particular those listed in document A/AC.182/L.100/Rev.1/Add.1. In the opinion of the sponsor, the best form for the proposed document would be the form of a declaration to be adopted by consensus by the General Assembly. In that connection, specific examples were recalled of various important documents elaborated by the Special Committee in the past, many of which were in the form of declarations. The adoption of the proposed Declaration would constitute yet another practical contribution of the Special Committee to the work of the United Nations. The sponsor stressed its possible particular usefulness for the work of the Security Council and expressed its general satisfaction at the progress achieved during the discussion of the proposal at the previous session of the Committee. Delegations were also urged to intensify their efforts in order to finalize the work on the proposal at the current session.

41. Following the introduction of the revised working paper, a general remark was made that, in view of its late issuance, there had not been enough time for certain delegations to study the revised proposal thoroughly, especially its relationship to the provisions contained in annex II to General Assembly resolution 51/242 dealing with the question of sanctions imposed by the United Nations. The relevance of the proposal in its entirety was questioned in view of the fact that other bodies of the Organization were seized of the issues discussed therein, and it was stated that silence should not be taken as agreement on the whole text or any part thereof. The Working Group then commenced a paragraph-by-paragraph reading of sections I and II of the proposed Declaration contained in the annex to the revised working paper.

Section I
Opening words

42. It was suggested that the section should start with the words "Solemnly adopts", instead of "Solemnly proclaims".

Paragraph 1

43. The sponsor delegation indicated that the original text was essentially retained.

44. The point was made that the preconditions enumerated in the paragraph for the application of sanctions were unacceptable and impermissible, especially in the light of the evolving practice in those matters. They could make application of certain sanctions, like financial sanctions, problematic. It was also indicated that the last part of the paragraph seemed redundant. A fundamental difference was noted between paragraph 1 of annex II to General Assembly resolution 51/242 and the paragraph under consideration. It was pointed out that, while both paragraphs established conditions for the application of sanctions under Article 41 of the Charter, the latter considerably broadened them. In that regard, the views on the subject expressed at the previous sessions of the Special Committee were reiterated.[21]

45. In response, the sponsor delegation explained that the paragraph reflected the developments in the application of sanctions by the United Nations in recent decades. According to its vision, peaceful means had to be exhausted before the measures under Article 41 of the Charter could be implemented. In support of its position, reference was made to Articles 41 and 42 of the Charter and the commentaries thereto.

Paragraph 2

46. The sponsor delegation referred to editorial changes to the paragraph enumerated in document A/AC.182/L.100/Rev.1/Add.1 and informed the Working Group of the specific amendments made.

47. During the debate, support was expressed for retaining the paragraph as proposed by the sponsor delegation. The point was made that paragraph 2 of annex II to General Assembly resolution 51/242 contained similar provisions, except for the "time frame" requirement. The deletion of the words "and justice" was suggested.

48. In response, the sponsor drew the attention of delegations to paragraph 3 of annex II to General Assembly resolution 51/242 dealing with the notion of the time frame of sanctions. It also disagreed with the proposed deletion on the ground that the reference to the principles of justice could be found in Article 1 of the Charter and other international documents.

Paragraph 3

49. The sponsor delegation briefly introduced the paragraph. A question was raised regarding the proposed wording that sanctions were not to be used by one or more States for the purpose of "subjugating" another State. The point was made that in practice subjugating took place when sanctions were imposed. It was legal on the condition that the Security Council authorized the imposition of sanctions.

50. Disagreement was expressed regarding the concept that sanctions were to be considered an important instrument for preventing conflicts. In that connection it was observed that the main purpose of sanctions should be to modify the behaviour of a target party that was threatening international peace and security. Therefore, sanctions should be regarded as an important instrument for the maintenance of international peace and security and not for preventing conflicts.

Paragraph 4

51. The sponsor delegation noted that the original wording of the paragraph had been retained.

52. As a general remark, it was recalled that paragraph 7 of annex II to General Assembly resolution 51/242 contained a similar requirement concerning a clear warning. However, the latter was formulated in less categorical terms. On the other hand, a doubt was expressed regarding the need for the paragraph in its entirety in view of the requirement that the peaceful means ought to be exhausted. Conversely, support was expressed for the retention of the paragraph.

53. In response, the sponsor noted that the form of a declaration justified the more mandatory and unambiguous language used in the paragraph, which did not exclude the possibility for a certain flexibility.

Paragraph 5

54. The sponsor delegation recalled that a suggestion had been made to delete the reference to an "existing political order", which it did not accept.

55. As a general remark, it was mentioned that annex II to General Assembly resolution 51/242 did not contain similar provisions. The point was made that the comments reflected in the second part of paragraph 79 of the Special Committee's report to the General Assembly at its fifty-fifth session,[22] excluding those in the last sentence, remained relevant.

56. It was noted that the paragraph should be retained and should be read together with operative paragraph 6 of the proposed Declaration. On the other hand, several delegations were reluctant to accept the paragraph as drafted. The view was expressed that while sanctions were not tools for overthrowing or changing the regime or political order, such consequences could not be excluded under certain circumstances which could not be foreseen in advance. Caution was also expressed with respect to the concept of "existing political order", in particular whether it covered any or only lawfully existing political orders. In that regard, it was recalled that the Security Council had imposed sanctions aimed at changing the then existing apartheid regime.

57. By way of compromise, some drafting modifications were suggested, namely to replace the words "for the purpose" with the words "with the deliberate purpose", and the words "lawful regime or existing political order" with the words "lawful legal and political system".

58. The sponsor supported retaining the paragraph as drafted and noted that it had been extensively discussed in the past. The views expressed by delegations at the previous session were reflected in paragraph 72 of the 2002 report of the Special Committee.[23]

Paragraph 6

59. The sponsor delegation indicated that the only amendment made was the addition of the new sentence at the end of the paragraph, taken from paragraph 5 of annex II to General Assembly resolution 51/242, as proposed at the previous sessions of the Special Committee.

60. The point was made that the paragraph as amended was almost identical to paragraph 5 of annex II to General Assembly resolution 51/242. Certain discrepancies between the two paragraphs were indicated. It was also noted that the Arabic version of the paragraph did not contain the last sentence added by the sponsor delegation.

61. The sponsor agreed that the language of the paragraph should be closely aligned with that of paragraph 5 of annex II to General Assembly resolution 51/242.

Paragraph 7

62. The sponsor delegation noted that a sentence had been added at the end of the paragraph as suggested at the previous sessions and reflected in section I, paragraph 6, of document A/AC.182/L.100/Rev.1/Add.1. It was recalled that the suggestion was consistent with the practice of the application and implementation of sanctions.

63. Support was expressed for the general thrust of the paragraph. With respect to its first sentence, it was pointed out that certain material and financial harm on third States as a result of the imposition of certain sanctions, such as arms embargoes, was unavoidable. It was suggested that the sentence should be drafted in less categorical terms in order not to allow situations when third States would invoke the paragraph to oppose the imposition of those sanctions.

64. With respect to the second sentence, it was doubted that the Secretariat would be in a position to make an objective assessment of the consequences of sanctions. Support was expressed for the suggestion to insert the words "to the extent possible" before the words "prior to". Furthermore, to avoid preconditional and absolute language, it was suggested that the verb modal "must" should be replaced with a less categorical one.

65. Support was expressed for splitting the second sentence into two, so that the first sentence would deal with an objective assessment by the Secretariat of the consequences of sanctions for the target State while the second would deal with the assessment by the Secretariat of the consequences of sanctions for third States. The suggestion was also made to place the newly proposed first sentence at the end of paragraph 4 while retaining the second sentence at the end of paragraph 7. Alternatively, the former sentence could be set out as paragraph 4 bis. Conversely, preference was expressed for the retention of the paragraph as proposed by the sponsor delegation.

Paragraph 8

66. The sponsor delegation indicated that the paragraph was new. It was based on the amendment reflected in section I, subparagraph 2 (e), of document A/AC.182/L.100/Rev.1/Add.1.

67. While sympathizing with the general thrust of the paragraph, concern was expressed that the words "is not permissible" were excessively categorical. The

suggestion was made to start the paragraph with the words "No additional conditions for cessation or suspension of sanctions should be imposed".

68. The point was made that the ideas covered by the paragraph had been discussed at the 2000 session of the Committee, as reflected in paragraph 86 of the Committee's report for that session.[24] It was also noted that under certain conditions, for example, when a target State did not comply and did not show any intention to comply with Security Council resolutions, the need might arise for the imposition of additional conditions to strengthen the previously applied sanctions.

Paragraph 9

69. The sponsor indicated that no amendments had been proposed to the paragraph at the previous sessions and therefore the original wording had been retained.

70. No comments were made relating to the paragraph.

Paragraph 10

71. The sponsor noted that the original wording of the paragraph had been retained.

72. It was agreed to replace the term "economic" with the term "socio-economic" before the word "impact", to ensure consistency with the preceding paragraph.

Paragraph 11

73. The sponsor indicated that the wording of the paragraph reproduced entirely the text suggested in section I, paragraph 10, of document A/AC.182/L.100/Rev.1/Add.1.

74. No comments were made relating to the paragraph.

Paragraph 12

75. The sponsor indicated that the paragraph had been reformulated along the lines of section I, paragraph 11, of document A/AC.182/L.100/Rev.1/Add.1.

76. No comments were made relating to the paragraph.

Paragraph 13

77. The sponsor delegation noted that no changes had been made to the original wording.

78. The point was made that humanitarian considerations were especially pressing in time of armed conflict. A question was therefore raised as to why the words "equally pressing in time of peace and in time of armed conflict" were used in the paragraph. In response, the sponsor delegation referred to various resolutions adopted by the principal organs of the United Nations that reflected the new developments in the protection of the civilian population.

79. Suggestions were made with respect to the general structure of the operative part of the Declaration. It was noted that the operative part would benefit if it were restructured in different clusters, for example, under the headings "Basic principles", "Humanitarian considerations" and "Assessments". Furthermore, it was

suggested that the text of paragraph 13 could be used as a chapeau to some other paragraphs, such as paragraphs 11 and 15. A certain overlapping between some other paragraphs was also noted. While sympathizing with the above suggestions and comments, some delegations felt that the structural issues of the document should be addressed at a later stage, after the text had been agreed in its entirety.

80. The sponsor was receptive to the suggestions concerning possible restructuring of the operative part of the document following agreement on the substance of the entire proposal.

Paragraph 14

81. The sponsor delegation noted that the paragraph reflected the concept that decisions on sanctions could not lead to the violation of fundamental human rights not subject to suspension even in an emergency situation.

82. While supporting the general thrust of the paragraph, some delegations suggested drafting modifications. As a specific drafting modification, the suggestion was made to replace the last part of the paragraph after the words "the right to freedom from hunger", with the phrase "the right to effective public health and medical services to all". The sponsor indicated its receptiveness to the proposed changes.

83. Concern was expressed with respect to the scope of the notion of "fundamental human rights" which could not be subject to suspension even in an emergency situation. To eliminate any ambiguity in that respect, it was suggested that the paragraph should be reformulated so that it would call for sanctions regimes to be targeted and designed with appropriate humanitarian exemptions in mind in order to avoid any violation of the fundamental human rights. Those humanitarian exemptions would cover health requirements as well. Some support was expressed for the suggestion.

Paragraph 15

84. The sponsor delegation noted that a new sentence had been added at the end of the paragraph, as suggested in section II, paragraph 3, of document A/AC.182/L.100/Rev.1/Add.1.

85. The point was made that the reference in the paragraph to "international humanitarian law" encompassing also international human rights norms, was inappropriate. In support of this point, it was explained that international humanitarian law was part of the law of armed conflicts codified, inter alia, in the 1949 Geneva Conventions and the two 1977 Protocols additional thereto, distinct and separate from international human rights norms.

86. The sponsor delegation observed that the paragraph reflected the new developments in the world characterized by the increased number of internal, as opposed to international, conflicts, that had led to a broadening of the scope of international humanitarian law. Therefore, the reference in the paragraph to international humanitarian law was justified.

Paragraph 16

87. The sponsor delegation indicated that the only amendment made to the paragraph was the additional sentence based on the proposal reflected in section II, paragraph 4, of document A/AC.182/L.100/Rev.1/Add.1.

88. It was agreed that, in the first sentence, the words "review and" should be added after the word "periodic" so that the phrase, in relevant part, would read "periodic review and adjustment".

Paragraph 17

89. The sponsor delegation noted that no changes had been made to the original wording.

90. While supporting the thrust of the paragraph, it was suggested, by way of a drafting modification, that the opening words "The temporary suspension of sanctions is desirable" should be replaced with a stronger expression: "Sanctions should be suspended". Conversely, the view was expressed that not all cases of emergency situations or force majeure would lead to humanitarian disasters and, accordingly, suspension of sanctions on that ground would not always be required. Therefore, the need for a temporary suspension of sanctions should be examined on a case-by-case basis. In that connection, it was stressed that properly designed and managed sanctions regimes that allowed for humanitarian exemptions could effectively prevent a humanitarian disaster without the need for the temporary suspension of sanctions.

91. By way of compromise, it was suggested that the paragraph should be replaced with the following sentence: "Sanctions should be suspended if they result in a humanitarian disaster." As a further drafting modification, a proposal was made to replace the words "is desirable" with the words "may be necessary".

92. The sponsor delegation, in turn, suggested an alternative wording: "The temporary suspension of sanctions is advisable in emergency situations and in cases of force majeure in order to prevent a humanitarian disaster, and should be decided on a case-by-case basis." With regard to that suggestion, the view was expressed that it did not satisfactorily address the point that no such provision might be required if humanitarian exemptions had already been built into the sanctions regimes.

Paragraph 18

93. The sponsor delegation noted that the word "additional" had been added before the word "measures", in line with the proposal in section II, paragraph 6, of document A/AC.182/L.100/Rev.1/Add.1.

94. As a drafting modification, it was suggested that the word "the" should be inserted before the word "impermissibility".

Paragraphs 19 to 22

95. The sponsor indicated that the original wording had been retained in article 19 and that amendments had been made to the wording in paragraphs 20 to 22 to reflect the changes suggested in section II, paragraphs 8 to 10, of document A/AC.182/L.100/Rev.1/Add.1.

96. No comments were made relating to the paragraphs.

Paragraph 23

97. The sponsor delegation noted that, despite the amendments proposed as reflected in section II, paragraph 11, of document A/AC.182/L.100/Rev.1/Add.1, it had decided to retain the original wording.

98. In terms of a drafting modification, the suggestion was made to use the word "transparent" instead of the words "as transparent as possible", so that the phrase, in relevant part, should simply read "must be objective and transparent". Furthermore, it was suggested that the words "must be considered by the Security Council" should be replaced with the words "should be considered by the Security Council".

99. The sponsor expressed its receptiveness to the proposed drafting modifications.

Paragraph 24

100. The sponsor delegation indicated that the new sentence had been added at the end of the paragraph in the light of the suggestion made at the previous session of the Special Committee, as reflected in the last sentence of paragraph 85 of the Committee's report on that session.[25]

101. No comments were made relating to the paragraph.

Paragraph 25

102. The sponsor delegation indicated that it did not accept the suggestion made at the previous sessions of the Special Committee to replace the words "humanitarian limits" with the words "humanitarian considerations".

103. It was reiterated that, as a rule, the humanitarian considerations were factored into the sanctions regimes, with a view to minimizing their negative impact. A strong preference was expressed for the words "humanitarian limits" to be replaced with "humanitarian considerations". Retaining the reference to "humanitarian limits" would imply that sanctions regimes gave limited consideration to humanitarian concerns, which was not the case.

104. The Chair encouraged the sponsor delegation and the delegation concerned to try to work out an acceptable formulation for the paragraph.

Section II

105. In introducing the section, the sponsor delegation indicated that the aim of the section was to reaffirm the relevant Articles of the Charter.

106. No comments were made relating to section II.

Preambular part of the draft Declaration

107. Upon the conclusion of the consideration of the operative paragraphs in sections I and II, the Working Group proceeded to a consideration of the preambular part of the proposed Declaration.

108. The sponsor delegation observed that it reflected the essence of the main provisions found in the operative part of the Declaration. Among other elements, it contained a non-exhaustive list of the declarations previously adopted by the General Assembly. The proposed paragraphs were in full conformity with the Charter of the United Nations. The sponsor recalled that practically all previously adopted declarations contained preambles and reiterated the hope that the document would be adopted by consensus.

109. The question was raised as to whether there should be two preambles: one for the General Assembly resolution, which was set out at the beginning of the revised working paper, and another one for the proposed Declaration. As regards the preamble to the proposed Declaration, the view was expressed that references therein to certain documents, such as the Manila Declaration on the Peaceful Settlement of International Disputes, did not appear appropriate. Instead, reference should rather be made to the relevant General Assembly resolutions, including resolution 51/242. It was proposed that the second preambular paragraph of the draft General Assembly resolution should be moved to the preamble to the Declaration. It was also suggested that the preamble to the Declaration should include a new opening paragraph, reading "Guided by the purposes and principles of the Charter of the United Nations". In addition, it was stressed that a new separate preambular paragraph should be included to acknowledge the efforts of the Security Council to take into account the humanitarian concerns when imposing sanctions.

110. The sponsor delegation indicated that it could consider merging the two preambles into one text and expressed its receptiveness to the other suggestions referred to above.

First preambular paragraph

111. No comments were made on the paragraph.

Second preambular paragraph

112. It was suggested that the qualifying words "which may threaten international peace and security" should be added at the end of the paragraph. The sponsor indicated its receptiveness to the proposed modification.

Third, fourth and fifth preambular paragraphs

113. No comments were made on the paragraphs.

Sixth and seventh preambular paragraphs

114. It was suggested that, with regard to the sixth preambular paragraph, the word "including" should be replaced by the word "and", and with respect to the seventh preambular paragraph, the qualifying word "destructive" should be deleted. The sponsor indicated its readiness to examine the proposed changes.

Eighth preambular paragraph

115. It was suggested that the words "humanitarian limits" should be substituted by the words "humanitarian aspects" and that the expression "to alleviate the suffering of" should be replaced by the expression "to minimize the negative impact of

sanctions especially on". The sponsor delegation indicated its receptiveness to the proposed amendments.

Ninth preambular paragraph

116. No comments were made relating to the paragraph.

Tenth preambular paragraph

117. It was suggested that the words "and justice" should be removed from the provision, which did not elicit objections by delegations.

Eleventh preambular paragraph

118. The view was expressed that sanctions could not necessarily be adopted only when other peaceful means had been exhausted, as the first part of the paragraph suggested. It was proposed, by way of compromise, that the qualifying word "appropriate" should be included after the word "other" so that the phrase, in relevant part, would read "other appropriate peaceful means". Furthermore, reluctance was voiced with regard to going along with the second half of the paragraph indicating that sanctions could be adopted only when the Security Council determined the existence of a threat to the peace, a breach of the peace or an act of aggression. In that connection, reference was made to regional organizations which had imposed sanctions in the absence of the Security Council resolutions and to instances where individual countries had unilaterally imposed sanctions as well.

119. The sponsor delegation reaffirmed its understanding that sanctions could be applied only after peaceful means had been exhausted and after the Security Council had determined the existence of a threat to the peace, a breach of the peace or an act of aggression. As for the application of sanctions by regional agencies or individual States, it was pointed out that they could do so if authorized by the Security Council. In that regard, the reference was made to Article 53 of the Charter, inter alia, stipulating that "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council". It was stated, therefore, that the proposed substantive changes were not acceptable because they aimed at undermining the thrust of the proposal.

120. The Chair encouraged the sponsor delegation and the delegations concerned to try to work out an acceptable language for the paragraph, taking into account in particular Article 52 of the Charter.

Twelfth and thirteenth preambular paragraphs

121. No comments were made on the paragraphs.

Title of the document

122. The view was expressed that the title of the document should be considered at a later stage once the legal nature and the form of the document had been generally agreed upon. In terms of a drafting modification, it was suggested that the title could be slightly amended to read "Declaration on the basic conditions and standard criteria for the imposition and application of sanctions and other coercive measures".

Form of the document

123. Concerning the final form of the document, some delegations favoured the form of a declaration. Others reiterated the view expressed at the previous sessions of the Special Committee that it would be more appropriate to formulate the document as a non-binding instrument setting out provisions in a less mandatory sense. The point was made that the document should not be in the form of a declaration at all but should rather remain as a working paper, which could be transmitted for information from the Special Committee to other bodies concerned, for example, to the Security Council working group on sanctions.

124. While some delegations reiterated their view that the proposed Declaration should be adopted by consensus, a question was raised as to the possibility of using that procedure in view of the specific objection to the document by certain delegations. In that connection, it was recalled that, in accordance with General Assembly resolution 50/52 of 11 December 1995, the Special Committee should operate on the basis of the practice of consensus. However, the notion of "consensus" should not be understood as "unanimity". The view was expressed that in order to avoid the technical constraints with respect to the procedure for the adoption of the document in the Committee, a decision on the ultimate form thereof should be taken at the higher political level, either in the Sixth Committee or in the General Assembly. On the other hand, it was noted that nothing prevented the Special Committee from adopting the proposed Declaration by vote, if necessary.

125. As a general remark, the Chair noted that since both the nature and the form of the future document were yet to be clarified by the Special Committee, it appeared premature to start the review of the proposed draft General Assembly resolution contained in the beginning of the working paper submitted by the Russian Federation. The view was expressed that the draft resolution might be examined since it was part of the proposal of the Russian Federation. In that connection it was suggested, by way of a drafting modification, that the first preambular paragraph should be amended, in relevant part, to read "... in which it adopted annex II entitled 'Question of sanctions imposed by the United Nations'". Furthermore, it was suggested that a new preambular paragraph could be inserted after the first one, noting that the need existed for making certain amendments to and complementing annex II to General Assembly resolution 51/242.

126. At its 4th meeting, the Working Group concluded the first reading of the preamble and the operative part of the draft Declaration submitted by the Russian Federation, subject to the amendments proposed. It was agreed that the sponsor delegation would prepare a revised version of the working paper for the second reading by the Special Committee.

C. Revised working paper submitted by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions

127. During the general exchange of views held at the 243rd meeting, several delegations expressed their support for the proposal of the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions and stressed the importance of its continued consideration.

128. The Working Group considered the proposal at its 4th and 5th meetings, on 8 and 9 April, respectively. At the 4th meeting the Libyan Arab Jamahiriya introduced the revised working paper on the strengthening of certain principles concerning the impact and application of sanctions (A/AC.182/L.110/Rev.1), contained in paragraph 89 of the 2002 report of the Special Committee.[26] It recalled that some of the principles contained in the proposal had been first suggested at the fifty-fifth session of the General Assembly in the context of consultations of the Sixth Committee on the draft resolution on the implementation of the provisions of the Charter related to assistance to third States affected by sanctions. The current text, with explanatory notes providing the basis for the proposed principles, under the Charter of the United Nations and principles of international law, built upon the earlier Libyan proposal (A/AC.182/L.110 and Corr.1) contained in paragraph 116 of the 2001 report of the Special Committee[27] and took into account comments made by delegations. It also noted that the proposed principles, which complemented the proposal by the Russian Federation entitled "Declaration on basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation" (see sect. III.B above), were aimed at enriching the debate on the impact and application of sanctions.

129. At the 5th meeting, the Working Group proceeded on a section-by-section consideration of the proposal, beginning with its section II, entitled "The power of the Security Council to impose sanctions is subject to the Charter and to international law".

1. The power of the Security Council to impose sanctions is subject to the Charter and to international law

130. The sponsor delegation made reference to paragraphs 4 and 5 of the explanatory notes of its proposal[28] and observed that the power of the Security Council to impose sanctions was not absolute. The Council derived its power from the Charter. Accordingly, such power was exercisable subject to the provisions of the Charter and in accordance with international law. It was also noted that the legal basis for such authority was Article 24, paragraph 1 of the Charter, by the terms of which Member States conferred on the Council the power to act on their behalf in its discharge of the primary responsibility for the maintenance of international peace and security. That mandate was, however, subject to paragraph 2, which provided that the Council should act in accordance with the purposes and principles of the United Nations, thus including the principles of justice and international law in paragraph 1 of Article 1.

131. The sponsor delegation also acknowledged the power of the Security Council to act in situations that posed a threat to the peace or a breach of the peace or constituted an act of aggression. It was however noted that the legal context in which any such action would be taken was the Charter. Consequently, legitimate questions could be asked in situations where the Council acted in a discriminatory or arbitrary manner. It was therefore asserted that when imposing sanctions, the reasons therefor should be disclosed, and their scope clearly and meticulously defined.

2. Sanctions and coercive measures constitute exceptional action, in the sense that such action is a last resort and must only be imposed within the narrowest bounds and after all peaceful means have been exhausted

132. The sponsor delegation noted that the proposed principle, which was similar and complementary to, and did not lay down a different principle from, paragraph 1 of the proposal of the Russian Federation entitled "Declaration on the basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation", proceeded on the basis that sanctions were an exceptional measure, imposed within narrowly defined bounds and as a last resort after the exhaustion of all peaceful means of dispute settlement. It was further stated that the power to impose sanctions, which was as a tool available to the Security Council, should not be abused.

133. The sponsor delegation also noted that although the principle was not explicitly mentioned in the Charter, it could be objectively implied from the very nature of sanctions and from the provisions of the Charter, in particular Article 24, paragraph 2. It was further explained that it would be foremost to have recourse to peaceful means of settlement of disputes, before coercive measures, which were exceptional, and constituted an interference in the affairs of a State, were applied in response to a situation.

134. The view was expressed, however, that the proposed principle could not be sustained in the light of the clear provisions of Article 39 of the Charter, noting that, from a legal viewpoint, the provisions of Article 41 could not be subjected to conditions other than those contemplated in Article 39, and as a practical matter, it would constrain the ability of the Security Council to respond to a situation to which Article 39 related if means of peaceful settlement of disputes under Chapter VI were to be exhausted first. It was noted further that a threat to or a breach of international peace and security or an act of aggression could exist without also being an identifiable dispute which could lend itself to action under Chapter VI. The view was also expressed that paragraph 1 of annex II to General Assembly resolution 51/242, providing, inter alia, that sanctions should be resorted to only with the utmost caution, "when other peaceful options provided by the Charter are inadequate", was of doubtful constitutional validity and would at any rate not be binding on the Security Council.

135. While pointing out that the application of Article 41 would not per se be abusive, the sponsor delegation noted that the application of sanctions should be consistent with paragraph 2 of Article 24, and considered in the light of annex II to General Assembly resolution 51/242. It was stated that the provisions of annex II, especially paragraph 2, were consistent with the substance of the proposal that had been put forward. It also stressed that its proposal was aimed at seeking ways of establishing an effective system for the imposition of sanctions.

3. The imposition of sanctions must not place upon the targeted State financial, economic or humanitarian burdens that are additional to and other than those resulting from the direct application of the sanctions to the extent necessary to achieve their objective

136. The sponsor delegation pointed out that the principle should be considered as part of the continuing dialogue on sanctions. It noted in particular that sanctions were an exceptional measure which should be imposed as a necessity, without

imposing on the target State additional financial, economic or humanitarian burdens than those resulting from the direct application of sanctions. Without doubting the importance of sanctions, the delegation also stated that sanctions should not impose excessive damage without yielding the desired results. It stressed that the imposition of sanctions should be subject to the principles of general international law, such as the principle of proportionality, noting that such an approach was consistent with the work of the International Law Commission in the context of the draft articles on the responsibility of States for internationally wrongful acts.

4. Sanctions must achieve their goal

137. The sponsor delegation noted that the proposed principle was linked to and an extension of the preceding principle and dealt with questions of the legitimacy of the objective of sanctions. It observed further that sanctions should not be prejudicial to the rights of third States or the targeted State. While the Sixth Committee was already seized of the former question, the sponsor delegation noted that it was necessary also to address questions concerning the damage inflicted on the targeted State, emphasizing that basic rights of vulnerable groups should not be violated. In that connection, attention was drawn to paragraphs 13 to 15 and 25 of the proposal by the Russian Federation entitled "Declaration on the basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation".

5. The targeted State has a right to seek and obtain just compensation for any unlawful damage done to it by sanctions imposed without good grounds or in a way that exceeds requirements and is incompatible with the notion of proportionality with the achievement of their objective

138. The sponsor delegation noted that the principle dealt with an aspect that had not yet been discussed in any of the debates on sanctions. It dwelt on possibilities in which measures taken by the Security Council would not be in accordance with the provisions of the Charter or would give rise to consequences beyond the desired objective, or situations where the Security Council would act *ultra vires*.

139. The delegation acknowledged that legitimate questions had been raised during the 2001 session of the Special Committee and indicated that an in-depth analysis was required to answer many of the questions raised in that context, such as: which was the competent authority to judge, evaluate and assess the legitimacy of the sanctions imposed? Would the responsibility be the collective responsibility of the Security Council as a whole, or of its individual members, jointly or severally, or of the United Nations as a whole? It was also necessary to address questions arising from the application of sanctions by other intergovernmental organizations, which often applied different standards.

140. The sponsor delegation alluded to the relevance of paragraph 31 of the report of the International Law Commission on the work of its fifty-fourth session,[29] noting that the Commission had posed specific questions as part of the dialogue on the topic relating to the responsibility of international organizations, the consideration of which by the Commission had been taken note of by the General Assembly in its resolution 57/21 of 19 November 2002. Since the topic on the Commission's agenda was directly linked to the proposal that it had made, the sponsor delegation

suggested that the Special Committee recommend that the Commission include, in its study of the topic, issues concerning the proposed principle.

141. The view was expressed that the whole proposal by the Libyan Arab Jamahiriya formed an important basis for discussion, noting that attempts should be made to produce a concrete draft document containing the first four principles (sects. 1-4 above), which could be annexed to a draft resolution, to be discussed at a future session.

142. It was noted further that the last principle (sect. 5 above) raised an important matter of progressive development and codification of international law, and should appropriately be taken up by the International Law Commission and debated in the Sixth Committee.

143. The sponsor delegation expressed its belief that the dialogue on its proposal would result in the adoption of a document containing a set of principles. It stated, however, that it had not made a determination on the form of such a document. It was noted that the debate on the proposal had been useful and would assist in clarifying the content and form of a document to be presented for further discussion.

D. Consideration of the working paper submitted by the Russian Federation entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations"

144. During the general exchange of views held at the 243rd meeting, the sponsor delegation, the Russian Federation referred to the working paper entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations",[30] which it had submitted to the Special Committee at its 1998 session. The sponsor delegation reiterated that the aim of the proposal was to improve the United Nations peacekeeping operations, taking into account significant problems facing the Organization in that area. It was suggested that the Special Committee should focus, inter alia, on such key legal issues as the purpose of a peacekeeping operation, specifying basic principles of peacekeeping, including such principles as consent of the parties, neutrality and impartiality; the non-use of force, except in self-defence; and some others. The consideration by the Special Committee of the legal issues of peacekeeping directly linked to the Charter could proceed in close collaboration with other bodies of the Organization dealing with the practical aspects of peacekeeping, especially with the Special Committee on Peacekeeping Operations. It was pointed out that, owing to the multifaceted nature of the issue, it would be possible to avoid duplicating work carried out by other bodies of the Organization.

145. A view was expressed in support of the in-depth consideration of the proposal based on the overall review of the vast practice of the United Nations in that field. It was stated that the discussions on peacekeeping by other bodies of the United Nations should not preclude the consideration of the legal aspects of peacekeeping by the Special Committee. Some other delegations stressed that the Special Committee should avoid duplicating the work on peacekeeping carried out by other more specialized bodies of the Organization, such as the Special Committee on Peacekeeping Operations.

146. In its introductory statement at the 5th meeting of the Working Group, the sponsor delegation stressed that, owing to the multifaceted nature of the issue, the focus be first on the development of a legal basis for the peacekeeping operations carried out with the consent of States in the context of Chapter VI of the Charter. The following key elements of such a legal framework were highlighted: a clear definition of the mandate of peacekeeping operations, including humanitarian assistance; establishing the limits to peacekeepers' right to self-defence while strengthening their protection; analysing the mechanism of apportioning responsibility between the United Nations and troop-contributing States for the damage caused in the course of peacekeeping operations; and specifying basic principles of peacekeeping, including such principles as non-interference in the internal affairs of the States parties to the conflict, neutrality and impartiality. It was reiterated that the consideration of those topical legal issues of peacekeeping by the Special Committee should proceed in close collaboration with other bodies of the United Nations dealing with the practical aspects of peacekeeping, especially with the Special Committee on Peacekeeping Operations. It was also stated that there was no duplication in the work of the above bodies since they were addressing a variety of issues of peacekeeping in accordance with their respective mandates. In conclusion, the sponsor delegation expressed its readiness to consider any possible changes to the document and stressed that the proposal was entirely within the mandate of the Special Committee.

147. A statement of a general nature was made in support of the detailed consideration of the proposal by the Special Committee. According to that statement the issues raised in the proposal in the context of Chapter VI of the Charter were highly topical, important and relevant to the work of the Organization and the Special Committee.

E. Consideration of the working papers submitted by Cuba at the 1997 and 1998 sessions of the Special Committee, entitled "Strengthening of the role of the Organization and enhancing its effectiveness"

148. During the general debate at the 243rd meeting, some delegations referred to current world events, in particular to instances of the use of military force and unilateral recourse to other coercive measures by certain States without the authorization by the Security Council. It was stressed that, in the light of those events, the credibility of the Organization, especially in the area of the maintenance of international peace and security, one of the fundamental purposes of the Organization, had been seriously undermined. Those delegations placed special importance on the work of the Special Committee in reviving the role of the Organization and reactivating and strengthening the provisions of the Charter of the United Nations.

149. Some delegations expressed the view that the Special Committee should continue examining measures aimed at revitalizing the General Assembly as the principal deliberative, legislative and representative organ of the United Nations in order to ensure the efficient and effective realization by it of its functions under the Charter of the United Nations, especially in the area of the maintenance of international peace and security. In that regard, the consideration in the Special

Committee of the working papers submitted by Cuba (A/AC.182/L.93 and Add.1) was characterized as important and timely. It was stated that, notwithstanding the work by other bodies within the Organization aimed at revitalizing the Organization as a whole and its principal organs, the Special Committee, in accordance with its mandate, had its own important role to play in contributing to the reinforcement and democratization of the Organization, taking into account, inter alia, the principles and goals set out in the United Nations Millennium Declaration.[31] In the view of some delegations, such work by the Special Committee did not duplicate but rather complemented the efforts by other bodies in that area. It was stated that, with a political will on the part of certain delegations, progress on the working papers could be achieved resulting in the increased authority and efficiency of the United Nations and democratization of its organs, in particular the Security Council.

150. At the 9th meeting of the Working Group, the sponsor delegation, referring to its working papers, stressed that the thrust of the proposals aimed at analysing the functions and powers of the General Assembly and the Security Council regarding the maintenance of international peace and security, and expressed the view that the current developments in the world questioned the credibility of the Organization, making the proposed analysis more important than ever for the revitalization of the Organization and enhancing its capacity. The sponsor was of the view that, with the world currently being on a particular dangerous track, Member States should reaffirm their commitments with respect to the concepts set out in the Charter, in particular with respect to the functions and powers of the principal organs of the Organization. The Security Council had assumed more functions and responsibilities than provided for in the Charter, while the General Assembly, the main and most democratic organ in the Organization, had been paralysed. The sponsor also referred to the powers of the General Assembly under Articles 10, 11, 13, 14 and 24 of the Charter, and expressed the view that only when the General Assembly fully assumed its functions as set forth in the Charter would the United Nations be able to assert itself and play an important role in the current international context. The General Assembly must play an active role at the international level, examine complex crisis situations and promote a dialogue between the parties thereto. Referring to the particularly serious situation in which the world found itself currently, the sponsor stressed that the General Assembly must act hand in hand with the Security Council in a firm and constructive manner. In the sponsor's view, the Special Committee was the only body in the Organization whose mandate was to formulate proposals concerning the Charter. It expressed the hope that the substantive discussion of the working papers would make it possible to reach a consensus on the appropriate measures to strengthen the relevant provisions of the Charter.

151. An observation was made in support of the working papers submitted by Cuba, which were characterized as important documents that deserved serious scrutiny by the Special Committee with a view to formulating concrete recommendations on the matter.

F. Consideration of the revised proposal submitted by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security

152. During the general exchange of views held at the 243rd meeting, some delegations emphasized the need to consider the revised proposal submitted by the sponsor delegation at the 1998 session of the Special Committee (A/AC.182/L.99) as contained in paragraph 98 of the 1998 report of the Special Committee.[32]

153. At the same meeting, the sponsor delegation, noting that the current situation in Iraq underscored, inter alia, the imbalance that existed in the powers exercised by the principal organs of the United Nations, reiterated the importance of the consideration of its revised proposal by the Special Committee. It was noted that the aim of the proposal was to strengthen the role of the United Nations in safeguarding international peace and security through the revitalization of the role of the General Assembly and the reform of the Security Council and the improvement of its working methods.

154. The sponsor delegation reaffirmed the need for the Security Council to conduct its business in open rather than closed meetings and for the formal adoption of its provisional rules of procedure. Furthermore, the sponsor delegation noted that Security Council reform would be incomplete without the removal of the requirement for the concurring votes of the permanent members of the Council, which was unjustifiable under, and inconsonant with, the principles of justice, equality and democracy. It also expressed support for efforts to increase the membership and equitable representation of the Council as well as efforts leading to the strengthening of the role of the General Assembly.

155. The sponsor delegation also reiterated the need for the consideration of its other proposal contained in a communication addressed to the Secretary-General of the United Nations and three former heads of State concerning the establishment of a committee of "the wise men of the world",[33] noting further that such a committee could contribute decisively to the peaceful settlement of disputes.

156. At the 9th meeting of the Working Group, on 15 April, the sponsor delegation echoed the need to enhance the role of the United Nations on the basis of the principles of justice and equality. It reiterated its concerns about the imbalance in the exercise of powers in the maintenance of international peace and security among the various principal organs, attributing such imbalance to the powers of the permanent members of the Security Council, who dictated its will, leading to its inability to take effective action or to its taking action which lacked a legal basis or transparency. The sponsor delegation also noted that its revised proposal (A/AC.182/L.99), containing seven specific suggestions, was complementary to the proposal by Cuba on the strengthening of the role of the Organization and enhancing its effectiveness, which also sought to enhance the role of the General Assembly, taking into account the Millennium Development Goals (see sect. III.E above).

157. Recalling previous discussions on the revised proposal, the sponsor delegation noted that the proposal had been on the table for several years. Considering the positive reaction that the proposal had received in the past, it was propitious for the Special Committee to consider it in detail. The sponsor noted that previously, suggestions had been made that improvements in the working methods of the Security Council had occurred or that the proposal was a duplication of efforts since

other committees or working groups of the General Assembly were dealing with similar matters. It noted, however, that that was simply an indication of lack of political will since it only led to delays in the implementation of the proposed reforms contained in the proposal. Consequently and in order to avoid further delay, the sponsor delegation proposed that the Special Committee recommend that the seven points comprising its revised proposal be referred to the Sixth Committee for consideration of the legal aspects and to make the necessary recommendation to the General Assembly.

158. While stressing the importance of separation of powers, coordination and proper interaction between the various organs of the United Nations in the pursuit of the purposes and principles of the Charter, a view was expressed in support of the content of the proposal. It was pointed out that Articles 11, 12 and 35 (2) and (3) of the Charter provided the framework for striking an appropriate balance between the functions of the General Assembly and the Security Council under the Charter. It was noted further that the United Nations could assume an active and fundamental role only to the extent that all its Members were involved in its activities, and its future would not be secure if a majority of its Members were sidelined. It was therefore important that its Member States review the Charter in a balanced manner with a view to giving practical meaning to its provisions. It was noted that there were precedents, from which lessons could be drawn, in which the General Assembly and the Security Council had dealt with the same matter, originating in the Assembly and later taken up by the Council and vice versa. On that view, support was expressed for the referral of the revised proposal for the consideration of the Sixth Committee.

G. Consideration of the revised working paper submitted by Belarus and the Russian Federation

159. During the general exchange of views held at the 243rd meeting Committee, the Russian Federation, as a co-sponsor, referred to the revised working paper submitted by Belarus and the Russian Federation at the 2001 session of the Special Committee (A/AC.182/L.104/Rev.2),[34] which recommended, inter alia, that an advisory opinion be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence. It was pointed out that the proposal was topical and was aimed at clarifying the legal aspects of the issue.

160. Some delegations expressed support for the proposal. It was pointed out that the proposal had a basis in the principle of non-use of force as formulated in the Charter of the United Nations.

161. At the 6th meeting of the Working Group, the representative of the Russian Federation reiterated that the proposal sought to reaffirm the immutability of the provisions of the Charter of the United Nations concerning the use of force and to highlight the task of strengthening the role of the United Nations in the maintenance of international peace and security. It was also stressed that the proposal was in no way meant to embarrass certain States. The representative of the Russian Federation further pointed out that he would not object to the substantive discussion on the proposal being postponed to the next session of the Special Committee owing to the current political situation, which was not conducive to the non-confrontational legal

approach favoured by the sponsors for the consideration of their proposal. It was explained that the sponsors were flexible as to the content of the proposed draft resolution on the issue. The co-sponsor indicated that it might be beneficial to give thought to how advisable it would be to emphasize, in the proposal, the request for an advisory opinion of the Court, since the General Assembly, and the Security Council themselves could give an authentic interpretation of the provisions of the Charter.

162. The representative of Belarus, as the other co-sponsor, supported the above-mentioned statement of the representative of the Russian Federation and also favoured a non-confrontational approach to the issue. He pointed out that the proposal was solely aimed at strengthening the system for the maintenance of international peace and security, by reaffirming an immutable right of the Security Council to legitimize the use of armed force by States, except in cases of the right of States to self-defence under Article 51 of the Charter. The proposed advisory opinion of the Court, in his view, was timely and could be very useful in deterring the use of armed force in violation of the powers of the Security Council, which had the primary responsibility for the maintenance of international peace and security.

163. A view in support of the proposal was expressed, opining that the advisory opinion by the International Court of Justice was timely since it would affirm the principle of the non-use of force and contribute to the maintenance of international peace and security.

164. A point was also made that, from an academic and legal point of view, the proposal could be supported as a means of reaffirming the Charter provisions regarding the illegitimacy of the use of force without prior authorization by the Security Council, except in cases of the right of States to self-defence. According to another view, such a reconfirmation of an obvious truth would not produce any useful results.

165. Views were also expressed that, since a request for an advisory opinion from the Court on the question was not useful, the proposal could not be supported.

166. Considering that the item had been on the agenda since 1999, and in the absence of the consensus necessary for the adoption of a recommendation by the Special Committee, it was suggested that the sponsors of the proposal could request the inclusion of the proposed request for an advisory opinion of the Court as an item in the agenda of the General Assembly, in accordance with its rules of procedure. As a matter of example reference was made to document A/47/249 and Add.1. In case the item was included in the agenda of the Assembly, the sponsors, or any other State, could submit the draft resolution requesting an advisory opinion of the Court on the issue for a vote, which could eventually lead to the obtainment of an advisory opinion from the Court.

Chapter IV
Peaceful settlement of disputes

167. During the general exchange of views held at the 243rd meeting, several delegations stressed the importance that they attached to the peaceful settlement of disputes. They acknowledged the contribution of the Special Committee in the elaboration of various instruments in that field and expressed the hope that the Committee would continue its work in that area. Several delegations also welcomed the adoption by the General Assembly of resolution 57/26 of 19 November 2002 on the prevention and peaceful settlement of disputes, based on a working paper in the Special Committee, sponsored by the delegations of Sierra Leone and the United Kingdom of Great Britain and Northern Ireland, noting that it was an additional example of such contribution.

168. The point was made that resolution 57/26 was a useful tool for early recourse by States to procedures for the prevention and peaceful settlement of disputes.

169. Several delegations emphasized the primacy that they attached to the principle of free choice of means, noting in particular that recourse to dispute settlement mechanisms required consent of the parties to the dispute. Several other delegations singled out the importance of judicial settlement of disputes and stressed the important role of the International Court of Justice as the principal judicial organ of the United Nations. They reaffirmed the authority of the Court and emphasized the necessity of ensuring that it had adequate resources, considering in particular its increased workload.

Chapter V

Proposals concerning the Trusteeship Council

170. During the general exchange of views held at the 243rd meeting, some delegations reiterated their view that it would be premature to abolish the Trusteeship Council or to change its status since the Council's existence did not entail any financial implications for the United Nations and assigning new functions to it would require an amendment to the Charter of the Organization. They emphasized that the abolition of the Council or a change of its status should be considered in the overall context of the reform of the Organization and the amendments to its Charter. The point was also made that the purpose for which the Council had been established by the Charter was still of relevance.

Chapter VI

Repertory of Practice of United Nations Organs and *Repertoire of the Practice of the Security Council*

171. During the general exchange of views held at the 243rd meeting, the delegations welcomed and further encouraged the ongoing efforts by the Secretary-General aimed at reducing the backlog in the publication of the *Repertory of Practice of United Nations Organs* and *Repertoire of the Practice of the Security Council*. Both publications were viewed as providing important information regarding the application and interpretation of the Charter of the United Nations and the work of its organs. The view was expressed that the Special Committee should adopt a recommendation to the General Assembly regarding the future of the publication of the *Repertory*, which was regarded as one of the most important publications of the United Nations, especially in the current situation, when there was a need to reaffirm the principles, norms and values of the Charter. It was stated that the *Repertory* was an important tool for preserving the institutional memory of the Organization's practice and for the interpretation of the Charter, and a source of the formation and progressive development of the norms and principles of international law.

172. At the 9th meeting of the Working Group, the Legal Counsel, in response to the wish of delegations expressed during the informal consultations conducted on 27 March 2003, reported to the Working Group on the status of the *Repertory* and the *Repertoire*. As regards the *Repertory*, he provided information on the background of the publication and its current status; the recommendation contained in the 2002 report of the Office of Internal Oversight Services on the in-depth evaluation of the Office of Legal Affairs (E/AC.51/2002/5) aimed at establishing a central *Repertory* unit; the financing of the publication as referred to in the 1998 report of the Secretary-General on both publications (A/53/386); the proposal of the Secretary-General to discontinue work on the *Repertory* in line with his 2002 report, entitled "Strengthening of the United Nations: an agenda for further change" (A/57/387), and an option that an academic institution might consider taking over the publication; the instructions not to include the *Repertory* in the budget proposals for the biennium 2004-2005; the dialogue within the Secretariat on alternative courses of action in addressing the backlog; and the placing of the *Repertory* on the Internet. As regards the *Repertoire*, the Legal Counsel reported on the current status of its preparation, highlighted the reasons for the seemingly slow progress in the elimination of the backlog in its preparation and provided an estimate of financial resources needed for the elimination of the backlog. He also answered the questions addressed to him by the delegations in connection with his report during the ensuing discussion.

173. Delegations expressed their gratitude for the report of the Legal Counsel and commented on a number of points raised therein. It was reiterated that both the *Repertory* and the *Repertoire* were valuable sources of information on the application of the Charter of the United Nations and the work of the Organization and represented indispensable tools for the preservation of the institutional memory of the Organization. The point was also made that the publications were only useful as long as they were up to date.

174. Delegations welcomed the substantive progress achieved in addressing the backlog in the publication of the *Repertory* and the *Repertoire*, and commended the Secretary-General for his continuing efforts to that end. It was noted that, in considering the backlog of both publications, attention should also be paid to the difficulties faced by the Secretariat in its efforts to make best use of the scarce resources allocated to those publications. The Special Committee should also discuss ways to ensure the regular publication of the *Repertory* and the *Repertoire*, including the idea of establishing a central *Repertory* section.

175. General support was expressed for the continuation of the *Repertory* as mandated by the General Assembly and in accordance with the views expressed by delegations in the Sixth Committee in 2002 in connection with the consideration of the Secretary-General's report on the subject (A/57/370). Some delegations made the point that, to address the needs of all Member States, the *Repertory* should be published in all the official languages of the United Nations.

176. According to some delegations, it was regrettable that the idea to discontinue the publication was still being considered even though the recommendation to that effect contained in paragraph 83 of the report of the Secretary-General (A/57/387) had not gained the support of any delegation. Reference was also made to the relevant sections of the proposed programme budget for the biennium 2004-2005 (A/58/6), which did not earmark any funds for the continuation of the publication. The delegations were of the view that to discontinue the work at the current stage would result in a waste of the resources invested so far into the publication and create another backlog. Reference was also made to the findings of the Office of Internal Office Services reflected in its report on the in-depth evaluation of legal affairs (see E/AC.51/2002/5, para. 54), in particular the finding that the *Repertory* continued to be the recurrent Office of Legal Affairs publication with the highest sales.

177. The Secretary-General was encouraged to explore different options and find the necessary resources and creative solutions for continuing the publication. Support was expressed for outsourcing work on the publication to academic institutions since they were considered to be its primary users. The current efforts of the Secretariat in that direction were welcomed.

178. Conversely, it was noted that outsourcing might jeopardize the quality of the publication. It was stressed that the *Repertory* was viewed as a reliable source of information largely because it was prepared by the United Nations Secretariat, which had both the relevant experience and direct access to the relevant information. It was questioned whether outside institutions would be able to preserve the credibility of the publication.

179. The preference was therefore expressed that the publication should be prepared within the Organization. In the view of some delegations, although it was essential that the Organization remain the author of the publication, the possibility of increased interaction between the Organization and academic institutions in preparing studies for the *Repertory* could nevertheless be explored and developed.

180. To address the problem of scarce financial resources, the point was made that additional funds could be found to continue the publication from sources other than United Nations budget. The suggestion was made that any income received from the

sale of the publications should be directed not to the general budget but to a trust fund established to support the preparation of the publication.

181. The delegations commended the initiative by the Secretariat to place the *Repertory* studies on the Internet, which was regarded as a useful temporary measure. On the other hand, the point was made by some delegations that such a measure should complement but could not substitute for the need for printed copies, keeping in mind the difficulties of gaining access to the Internet in some countries. The importance for the daily work of delegations of ensuring access to electronic versions of the *Repertory* was stressed. The hope was expressed that all published Supplements would eventually be available electronically in all official languages of the United Nations.

182. It was suggested that the Special Committee's report to the General Assembly at its fifty-eighth session should reflect the general support of delegations for the continued publication of the *Repertory*. It was also suggested that the Special Committee should recommend to the General Assembly that it address the issue of the future of the publication at that session.

183. At its 244th meeting, on 16 April, the Special Committee recommended that the General Assembly, at its fifty-eighth session:

- *Encourage* the Secretary-General in his continuous efforts to eliminate the backlog in the *Repertory of Practice of United Nations Organs* and in the *Repertoire of the Practice of the Security Council*, including by exploring options involving cooperation with academic institutions as a means to achieve this aim without prejudice to the continuation of their timely publication;
- *Commend* the Secretary-General for his initiative to make *Repertory* studies available on the Internet;
- *Request* the Secretary-General to make every effort, within the level of the currently approved budget, towards making electronically available all versions of the *Repertory of Practice of the United Nations Organs* as early as possible.

Chapter VII

Working methods of the Special Committee, identification of new subjects and coordination between the Special Committee and other United Nations bodies

A. Working methods of the Special Committee

184. During the general debate held at the 243rd meeting of the Special Committee, appreciation was expressed for the revised proposal submitted by the delegations of Japan and the Republic of Korea (A/AC.182/L.108/Rev.2). Some delegations felt strongly that the revised proposal aimed at improving the working methods of the Special Committee. In that connection, they stressed the need to streamline the work of the Committee in order to increase its efficiency and avoid duplicating the work of other United Nations bodies, such as the informal working group of the Security Council on sanctions and the Special Committee on Peacekeeping Operations.

185. It was observed that the Special Committee should focus on fewer topics and that the relevant proposals should be submitted much in advance to allow for a thorough reflection thereon. In terms of further practical proposals, the following were suggested: establishing a cut-off mechanism to prevent prolonged discussion of proposals year after year, considering some proposals once every two or three years instead of annually, and adopting the report in a less time-consuming manner, following the example in that regard of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 (on terrorism). The view was also expressed that the Committee could be utilized more efficiently than it had been in the past.

186. The observation was furthermore made that, while every effort should be made to improve the working methods of the Special Committee, that task should be accomplished without prejudice to the right of Member States to submit proposals for consideration by the Committee. As a general remark, it was observed that sufficient time should be allocated to the Special Committee for review of all items on its current agenda, with each, in terms of importance, to be considered on an equal footing.

187. At the 6th meeting of the Working Group, the delegation of Japan introduced the revised working paper and explained that the proposed new amendments to the text were technical in nature and generally reflected the thrust of the suggestions advanced at the previous session of the Special Committee. The revised working paper (A/AC.182/L.108/Rev.2) reads as follows (new provisions set out in bold):

> "In response to a request made in accordance with paragraph 3 (e) of General Assembly resolution **57/24** of **19 November 2002**, the Special Committee **agreed on** the following measures to improve its working methods and enhance its efficiency:
>
> (a) *Any delegation wishing to submit a new proposal* is encouraged:
>
> (i) To bear in mind the mandate of the Special Committee, and to confirm to the extent possible, **including** through consultation with the Secretariat if necessary, whether the new proposal would entail any duplication of the work being done by other bodies on the same subject;

(ii) To submit the proposal as far in advance of the session as possible;

(b) *A delegation submitting a proposal* is encouraged:

(i) To request the Committee to conduct a preliminary evaluation as to its necessity and appropriateness at the first **meeting** of the Committee;

(ii) After an exchange of views is held on its proposal, to assess the priority and the urgency of the proposal in comparison with other proposals discussed in the Committee, and to consider, where appropriate, the postponement or biennialization of the consideration of its proposal;

(iii) After the proposal has been discussed at reasonable length, to ask the Committee, where appropriate, to **suggest** whether the discussion on the proposal should be continued, taking into account the possibility of reaching a general agreement in the future;

(c) *The Special Committee* is **determined**:

(i) To ensure the meeting is conducted as efficiently as possible in order to minimize waste of time and resources, including allocated conference services;

(ii) To accord priority to the consideration of those areas on which a general agreement is possible, bearing in mind the relevant provisions of General Assembly resolution 3499 (XXX) of 15 December 1975;

(iii) To consider, where appropriate, the question of the duration of its next session with a view to making an appropriate recommendation to the General Assembly;

(iv) To review periodically other ways and means of improving its working methods and enhancing its efficiency, including ways and means of improving the procedure for the adoption of its report."

188. The delegation of Thailand announced its wish to become a co-sponsor of the proposal.

189. The revised working paper was considered during the 6th and 7th meetings of the Working Group. Informal consultations on the matter were also held on 10 April 2003. Support was expressed for efforts to streamline the work and improve the efficiency of the Special Committee. The revised proposal was characterized by some delegations as a timely and valuable tool in that regard. The hope was expressed that a consensus could be reached for the adoption of the revised proposal at the current session.

190. Some delegations expressed satisfaction with the text of the revised proposal in its entirety. However, several delegations pointed out that they continued to have difficulties with some of its provisions. In particular, they held the view that further revision of the wording was necessary to ensure that none of the proposed measures could be interpreted as somehow restricting the right of Member States to submit proposals within the framework of the mandate of the Special Committee.

191. Some delegations felt strongly that the Special Committee duplicated the work of other United Nations bodies in certain instances and therefore supported the proposed measures requiring delegations to ascertain that any new proposal would

not entail any duplication, as reflected in paragraph (a) (i) of the revised working paper. Conversely, the point was made that there could be no duplication of work, as the mandate of the Special Committee was unique and dealt with the legal aspects of issues which could possibly be under consideration by other bodies. In line with the latter view, it was suggested that all provisions for measures to avoid duplication should be removed from the text. Some other delegations expressed the view that the language in the text concerning duplication could be reformulated in less categorical terms. A point was made that such provisions on duplication could also be interpreted as restricting the right of Member States to submit proposals.

192. In the ensuing debate, the proposed paragraphs of the further revised paper were reviewed by the Working Group.

Introductory paragraph

193. With regard to the introductory paragraph preceding paragraph (a), doubt was expressed as to whether the placement of the term "measures" therein was entirely justified in the light of the rules of procedure of the General Assembly and other relevant resolutions of the General Assembly on the strengthening of the Organization, the improvement of its effectiveness and the revitalization of its organs. It was further indicated that the term "measures" appeared to be in contradiction with the general thrust of the provisions in paragraph (a).

Paragraph (a)

194. The following text for paragraph (a) (i) was provisionally adopted:

> "(a) Any delegation wishing to submit a new proposal is encouraged:
>
> (i) To bear in mind the mandate of the Special Committee as set out in General Assembly resolution 3499 (XXX) of 15 December 1975, and to ascertain to the extent possible, that the new proposal would not entail the same work being done by other bodies on the same subject, provided that the rights of delegations to make proposals should not be affected".

195. By way of a general comment, the observation was made that, although the subparagraph was provisionally adopted, the discussions leading to that result indicated that there was a lack of efficiency in the working methods of the Special Committee.

196. As regards subparagraph (ii), it was also provisionally adopted as formulated in the revised working paper.

Paragraph (b)

197. The view was expressed that subparagraphs (i), (ii) and (iii) were unacceptable in their entirety, as it was not clear how the tasks enumerated therein could be carried out, considering that the Special Committee functioned on the basis of consensus.

198. As regards subparagraph (ii), it was suggested that the phrase "or biennialization of the consideration" should be either deleted or modified to read "or to consider the method of the consideration".

199. Concerning the reference to "general agreement" in subparagraph (iii), it was recalled that, pursuant to General Assembly resolution 50/52, the Committee was supposed to take its decisions on the basis of the practice of consensus, and that the notion of "general agreement" could not be interpreted to mean "consensus".

Paragraph (c)

200. By way of a general remark, the view was expressed that the entire paragraph could be adopted without any change to the text as proposed in the revised working paper.

201. Regarding subparagraph (i), the concern was expressed that its language was inappropriately negative, and in that regard the following amended text was suggested: "To ensure that the meeting is conducted in the most efficient manner, including the best use of time, resources and allocated conference services".

202. Concern was reiterated in relation to the reference to the words "general agreement" in subparagraph (ii). In that regard, the point was made that the Special Committee should abide by General Assembly resolution 50/52 stipulating that its decisions should be adopted on the basis of the practice of consensus rather than by a general agreement. It was also suggested that the words "is possible" should be replaced by the words "appears possible", so that the phrase, in relevant part, would read "areas on which a general agreement appears possible".

203. As regards subparagraph (iii), the point was made, by way of a general remark, that the entire provision was unacceptable. It was observed that it was the prerogative of the Sixth Committee to consider the question of the duration of the sessions of the Special Committee based on the results of the work of the latter. In that connection, a view was voiced in support of the two-working-week duration as the optimal length of the sessions of the Special Committee. In that regard, no need was seen for revising the established practice, especially for reducing the duration of the Committee's sessions.

204. As regards subparagraph (iv), it was suggested that the word "periodically" should be replaced with the words "as and when necessary". The following text was provisionally adopted:

> "To review as and when necessary other ways and means of improving its working methods and enhancing its efficiency, including ways and means of improving the procedure for the adoption of its report".

205. In summing up the debate on the revised working paper, the Chairman noted that the Working Group had provisionally adopted paragraphs (a) (i), (a) (ii) and (c) (iv), as amended. It was decided that the remaining provisions contained in the revised working paper would be taken up by the Special Committee at its next session in 2004.

B. Identification of new subjects

206. At the 7th meeting of the Working Group, the Chairman informed the Working Group that the item had been discussed during the informal consultations held on 10 April 2003. The Chairman of the informal consultations made the following oral report on the results thereof:

"There had been the following four proposals in this regard as reflected in paragraphs 208 and 195 of the Committee's reports for 2001 and 2002, respectively:

(a) Basic conditions of 'provisional measures' under Article 40 of the Charter employed by the Security Council;

(b) Clarification of the term 'threat to international peace and security';

(c) Ways and means to overcome negative consequences of globalization and ensure the supremacy of law in international relations;

(d) Applicability of the Charter provisions to the concept of 'humanitarian intervention'.

As a general remark, the sponsor of the above orally advanced proposals explained their continued relevance for the Committee's attention. It was generally understood that the Special Committee should complete its work on the current agenda items rather than adding any new subjects."

207. The view was also expressed that the above orally advanced proposals were not ones that were useful for the Committee to take up.

208. A view was further expressed that it was not necessary that the Committee should complete its work on the current agenda items before considering any new subjects.

C. Coordination between the Special Committee and other United Nations bodies

209. At the 7th meeting of the Working Group, the observation was made that, while the work of the Special Committee could be positively evaluated, it would be useful if in the near future "bridges" could be built between it and other United Nations bodies in order to enable the Committee to revitalize its work with a view to having a greater vision on all the subjects under its consideration.

Notes

[1] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 33* (A/36/33), para. 7.
[2] A/48/573-S/26705, A/49/356, A/50/60-S/1995/1, A/50/361, A/50/423, A/51/317, A/52/308, A/53/312, A/54/383 and Add.1, A/55/295 and Add.1, A/56/303 and A/57/165 and Add.1.
[3] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 33* (A/57/33), para. 54.
[4] Ibid., *Fifty-fifth Session, Supplement No. 33* (A/55/33), paras. 50-97.
[5] Ibid., *Fifty-third Session, Supplement No. 33* (A/53/33), para. 45.
[6] Ibid., *Fifty-seventh Session, Supplement No. 33* (A/57/33), para. 89.
[7] Ibid., *Fifty-sixth Session, Supplement No. 33* (A/56/33), para. 116.
[8] Ibid., *Fifty-second Session, Supplement No. 33* and corrigendum (A/52/33 and Corr.1), para. 58.
[9] Ibid., *Fifty-third Session, Supplement No. 33* (A/53/33), para. 73.
[10] Ibid., para. 84.
[11] Ibid., para. 99.
[12] Ibid., *Fifty-fourth Session, Supplement No. 33* and corrigendum (A/54/33 and Corr.1), para. 101.
[13] Ibid., *Fifty-sixth Session, Supplement No. 33* (A/56/33), para. 178.

[14] Ibid., *Fifty-seventh Session, Supplement No. 33* (A/57/33), para. 171.
[15] Ibid., *Fifty-fifth Session, Supplement No. 33* (A/55/33), paras. 163-193.
[16] Ibid., para. 194.
[17] See A/53/312, paras. 6-57.
[18] See S/PV.4713.
[19] S/2000/319.
[20] See S/PV.4713.
[21] See *Official Records of the General Assembly, Fifty-third Session, Supplement No. 33* (A/53/33), para. 53, the statements following the first sentence; and ibid., *Fifty-fifth Session, Supplement No. 33* (A/55/33), para. 62, the statements following the first sentence.
[22] Ibid., *Fifty-fifth Session, Supplement No. 33* (A/55/33).
[23] Ibid., *Fifty-seventh Session, Supplement No. 33* (A/57/33).
[24] Ibid., *Fifty-fifth Session, Supplement No. 33* (A/55/33).
[25] Ibid., *Fifty-seventh Session, Supplement No. 33* (A/57/33).
[26] Ibid.
[27] Ibid., *Fifty-sixth Session, Supplement No. 33* (A/56/33).
[28] See ibid., *Fifty-seventh Session, Supplement No. 33* (A/57/33), para. 89.
[29] Ibid., *Supplement No. 10* (A/57/10).
[30] A/AC.182/L.89/Add.2 and Corr.1: see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 33* (A/53/33), para. 73.
[31] General Assembly resolution 55/2.
[32] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 33* (A/53/33).
[33] See ibid., *Fifty-seventh Session, Supplement No. 33* (A/57/33), paras. 136 and 137.
[34] See ibid., *Fifty-sixth Session, Supplement No. 33* (A/56/33), para. 178.

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